

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1745

Introduced by Assembly Member Torres

February 17, 2012

An act to amend Section ~~2929.3~~ 2924f of the Civil Code, relating to ~~real property mortgages~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1745, as amended, Torres. ~~Real property: maintenance of foreclosed property. Mortgages: notices of sale.~~

Existing law, requires a lender to file a notice of default in the case of nonjudicial foreclosure prior to enforcing a power of sale as a result of a default on an obligation secured by real property, as specified. Existing law also requires that a notice of sale be given before the power of sale may be exercised. Existing law requires the notice of sale to contain specified information regarding the property and the sale, and to be recorded with the county recorder, as specified. As of April 1, 2012, existing law also requires that the notice of sale contain language notifying potential bidders of specified risks involved in bidding on property at a trustee's sale, and a notice to the property owner informing the owner about how to obtain information regarding any postponement of the sale.

This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of sale pursuant to the above provisions after providing written approval of a short sale, as defined. The bill would also authorize a mortgagee, trustee, beneficiary, or authorized agent to withdraw an approval of a short sale if an underlying condition upon which approval was initially granted has

changed. The bill would also require a written notice to be provided to a short sale seller not less than 3 days prior to the withdrawal of approval that includes an explanation of the change of condition that caused the withdrawal.

~~Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law, until January 1, 2013, authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law, until January 1, 2013, requires a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924f of the Civil Code, as amended by
2 Section 2 of Chapter 229 of the Statutes of 2011, is amended to
3 read:
4 2924f. (a) As used in this section and Sections 2924g and
5 2924h, “property” means real property or a leasehold estate therein,
6 and “calendar week” means Monday through Saturday, inclusive.
7 (b) (1) Except as provided in subdivision (c), before any sale
8 of property can be made under the power of sale contained in any
9 deed of trust or mortgage, or any resale resulting from a rescission
10 for a failure of consideration pursuant to subdivision (c) of Section
11 2924h, notice of the sale thereof shall be given by posting a written
12 notice of the time of sale and of the street address and the specific
13 place at the street address where the sale will be held, and
14 describing the property to be sold, at least 20 days before the date
15 of sale in one public place in the city where the property is to be
16 sold, if the property is to be sold in a city, or, if not, then in one
17 public place in the judicial district in which the property is to be
18 sold, and publishing a copy once a week for three consecutive
19 calendar weeks, the first publication to be at least 20 days before

1 the date of sale, in a newspaper of general circulation published
2 in the city in which the property or some part thereof is situated,
3 if any part thereof is situated in a city, if not, then in a newspaper
4 of general circulation published in the judicial district in which
5 the property or some part thereof is situated, or in case no
6 newspaper of general circulation is published in the city or judicial
7 district, as the case may be, in a newspaper of general circulation
8 published in the county in which the property or some part thereof
9 is situated, or in case no newspaper of general circulation is
10 published in the city or judicial district or county, as the case may
11 be, in a newspaper of general circulation published in the county
12 in this state that (A) is contiguous to the county in which the
13 property or some part thereof is situated and (B) has, by comparison
14 with all similarly contiguous counties, the highest population based
15 upon total county population as determined by the most recent
16 federal decennial census published by the Bureau of the Census.
17 A copy of the notice of sale shall also be posted in a conspicuous
18 place on the property to be sold at least 20 days before the date of
19 sale, where possible and where not restricted for any reason. If the
20 property is a single-family residence the posting shall be on a door
21 of the residence, but, if not possible or restricted, then the notice
22 shall be posted in a conspicuous place on the property; however,
23 if access is denied because a common entrance to the property is
24 restricted by a guard gate or similar impediment, the property may
25 be posted at that guard gate or similar impediment to any
26 development community. Additionally, the notice of sale shall
27 conform to the minimum requirements of Section 6043 of the
28 Government Code and be recorded with the county recorder of the
29 county in which the property or some part thereof is situated at
30 least 20 days prior to the date of sale. The notice of sale shall
31 contain the name, street address in this state, which may reflect an
32 agent of the trustee, and either a toll-free telephone number or
33 telephone number in this state of the trustee, and the name of the
34 original trustor, and also shall contain the statement required by
35 paragraph (3) of subdivision (c). In addition to any other
36 description of the property, the notice shall describe the property
37 by giving its street address, if any, or other common designation,
38 if any, and a county assessor's parcel number; but if the property
39 has no street address or other common designation, the notice shall
40 contain a legal description of the property, the name and address

1 of the beneficiary at whose request the sale is to be conducted, and
2 a statement that directions may be obtained pursuant to a written
3 request submitted to the beneficiary within 10 days from the first
4 publication of the notice. Directions shall be deemed reasonably
5 sufficient to locate the property if information as to the location
6 of the property is given by reference to the direction and
7 approximate distance from the nearest crossroads, frontage road,
8 or access road. If a legal description or a county assessor's parcel
9 number and either a street address or another common designation
10 of the property is given, the validity of the notice and the validity
11 of the sale shall not be affected by the fact that the street address,
12 other common designation, name and address of the beneficiary,
13 or the directions obtained therefrom are erroneous or that the street
14 address, other common designation, name and address of the
15 beneficiary, or directions obtained therefrom are omitted. The term
16 "newspaper of general circulation," as used in this section, has the
17 same meaning as defined in Article 1 (commencing with Section
18 6000) of Chapter 1 of Division 7 of Title 1 of the Government
19 Code.

20 The notice of sale shall contain a statement of the total amount
21 of the unpaid balance of the obligation secured by the property to
22 be sold and reasonably estimated costs, expenses, advances at the
23 time of the initial publication of the notice of sale, and, if
24 republished pursuant to a cancellation of a cash equivalent pursuant
25 to subdivision (d) of Section 2924h, a reference of that fact;
26 provided, that the trustee shall incur no liability for any good faith
27 error in stating the proper amount, including any amount provided
28 in good faith by or on behalf of the beneficiary. An inaccurate
29 statement of this amount shall not affect the validity of any sale
30 to a bona fide purchaser for value, nor shall the failure to post the
31 notice of sale on a door as provided by this subdivision affect the
32 validity of any sale to a bona fide purchaser for value.

33 (2) (A) On and after April 1, 2012, if the deed of trust or
34 mortgage containing a power of sale is secured by real property
35 containing from one to four single-family residences, the notice
36 of sale shall contain substantially the following language, in
37 addition to the language required pursuant to paragraph (1):
38

39 NOTICE TO POTENTIAL BIDDERS: If you are considering
40 bidding on this property lien, you should understand that there are

risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee's sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day,

1 seven days a week, no-cost access to updated information. A
2 disruption of any of these methods of providing sale date and
3 postponement information to allow for reasonable maintenance or
4 due to a service outage shall not be deemed to be a violation of
5 the good faith standard.

6 (C) Except as provided in subparagraph (B), nothing in the
7 wording of the notices required by subparagraph (A) is intended
8 to modify or create any substantive rights or obligations for any
9 person providing, or specified in, either of the required notices.
10 Failure to comply with subparagraph (A) or (B) shall not invalidate
11 any sale that would otherwise be valid under Section 2924f.

12 (D) Information provided pursuant to subparagraph (A) does
13 not constitute the public declaration required by subdivision (d)
14 of Section 2924g.

15 (3) If the sale of the property is to be a unified sale as provided
16 in subparagraph (B) of paragraph (1) of subdivision (a) of Section
17 9604 of the Commercial Code, the notice of sale shall also contain
18 a description of the personal property or fixtures to be sold. In the
19 case where it is contemplated that all of the personal property or
20 fixtures are to be sold, the description in the notice of the personal
21 property or fixtures shall be sufficient if it is the same as the
22 description of the personal property or fixtures contained in the
23 agreement creating the security interest in or encumbrance on the
24 personal property or fixtures or the filed financing statement
25 relating to the personal property or fixtures. In all other cases, the
26 description in the notice shall be sufficient if it would be a
27 sufficient description of the personal property or fixtures under
28 Section 9108 of the Commercial Code. Inclusion of a reference to
29 or a description of personal property or fixtures in a notice of sale
30 hereunder shall not constitute an election by the secured party to
31 conduct a unified sale pursuant to subparagraph (B) of paragraph
32 (1) of subdivision (a) of Section 9604 of the Commercial Code,
33 shall not obligate the secured party to conduct a unified sale
34 pursuant to subparagraph (B) of paragraph (1) of subdivision (a)
35 of Section 9604 of the Commercial Code, and in no way shall
36 render defective or noncomplying either that notice or a sale
37 pursuant to that notice by reason of the fact that the sale includes
38 none or less than all of the personal property or fixtures referred
39 to or described in the notice. This paragraph shall not otherwise

1 affect the obligations or duties of a secured party under the
2 Commercial Code.

3 (c) (1) This subdivision applies only to deeds of trust or
4 mortgages which contain a power of sale and which are secured
5 by real property containing a single-family, owner-occupied
6 residence, where the obligation secured by the deed of trust or
7 mortgage is contained in a contract for goods or services subject
8 to the provisions of the Unruh Act (Chapter 1 (commencing with
9 Section 1801) of Title 2 of Part 4 of Division 3).

10 (2) Except as otherwise expressly set forth in this subdivision,
11 all other provisions of law relating to the exercise of a power of
12 sale shall govern the exercise of a power of sale contained in a
13 deed of trust or mortgage described in paragraph (1).

14 (3) If any default of the obligation secured by a deed of trust or
15 mortgage described in paragraph (1) has not been cured within 30
16 days after the recordation of the notice of default, the trustee or
17 mortgagee shall mail to the trustor or mortgagor, at his or her last
18 known address, a copy of the following statement:

19
20 YOU ARE IN DEFAULT UNDER A

21 _____,
22 (Deed of trust or mortgage)

23 DATED _____. UNLESS YOU TAKE ACTION TO PROTECT
24 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF
25 YOU NEED AN EXPLANATION OF THE NATURE OF THE
26 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A
27 LAWYER.

28
29 (4) All sales of real property pursuant to a power of sale
30 contained in any deed of trust or mortgage described in paragraph
31 (1) shall be held in the county where the residence is located and
32 shall be made to the person making the highest offer. The trustee
33 may receive offers during the 10-day period immediately prior to
34 the date of sale and if any offer is accepted in writing by both the
35 trustor or mortgagor and the beneficiary or mortgagee prior to the
36 time set for sale, the sale shall be postponed to a date certain and
37 prior to which the property may be conveyed by the trustor to the
38 person making the offer according to its terms. The offer is
39 revocable until accepted. The performance of the offer, following
40 acceptance, according to its terms, by a conveyance of the property

1 to the offeror, shall operate to terminate any further proceeding
2 under the notice of sale and it shall be deemed revoked.

3 (5) In addition to the trustee fee pursuant to Section 2924c, the
4 trustee or mortgagee pursuant to a deed of trust or mortgage subject
5 to this subdivision shall be entitled to charge an additional fee of
6 fifty dollars (\$50).

7 (6) This subdivision applies only to property on which notices
8 of default were filed on or after the effective date of this
9 subdivision.

10 (d) *A mortgagee, trustee, beneficiary, or authorized agent may*
11 *not record a notice of sale pursuant to this section after providing*
12 *written approval of a short sale.*

13 (1) *For purposes of this subdivision, “short sale” means a*
14 *transfer in which the trustor or mortgagor sells a property for a*
15 *price less than the remaining amount of the indebtedness secured*
16 *by the property at the time of sale.*

17 (2) *Approval of a short sale may be withdrawn by the mortgagee,*
18 *trustee, beneficiary, or authorized agent at any time if an*
19 *underlying condition upon which approval was initially granted*
20 *has changed. Not less than three days prior to the withdrawal of*
21 *approval, written notice shall be provided to the short sale seller*
22 *and shall include an explanation of the change of condition that*
23 *caused the withdrawal.*

24 (d)

25 (e) This section shall become operative on January 1, 2013.

26 ~~SECTION 1. Section 2929.3 of the Civil Code is amended to~~
27 ~~read:~~

28 ~~2929.3. (a) (1) A legal owner shall maintain vacant residential~~
29 ~~property purchased by that owner at a foreclosure sale, or acquired~~
30 ~~by that owner through foreclosure under a mortgage or deed of~~
31 ~~trust. A governmental entity may impose a civil fine of up to one~~
32 ~~thousand dollars (\$1,000) per day for a violation. If the~~
33 ~~governmental entity chooses to impose a fine pursuant to this~~
34 ~~section, it shall give notice of the alleged violation, including a~~
35 ~~description of the conditions that gave rise to the allegation, and~~
36 ~~notice of the entity’s intent to assess a civil fine if action to correct~~
37 ~~the violation is not commenced within a period of not less than 14~~
38 ~~days and completed within a period of not less than 30 days. The~~
39 ~~notice shall be mailed to the address provided in the deed or other~~
40 ~~instrument as specified in subdivision (a) of Section 27321.5 of~~

1 the Government Code, or, if none, to the return address provided
2 on the deed or other instrument.

3 (2) ~~The governmental entity shall provide a period of not less~~
4 ~~than 30 days for the legal owner to remedy the violation prior to~~
5 ~~imposing a civil fine and shall allow for a hearing and opportunity~~
6 ~~to contest any fine imposed. In determining the amount of the fine,~~
7 ~~the governmental entity shall take into consideration any timely~~
8 ~~and good faith efforts by the legal owner to remedy the violation.~~
9 ~~The maximum civil fine authorized by this section is one thousand~~
10 ~~dollars (\$1,000) per day that the owner fails to maintain the~~
11 ~~property, commencing on the day following the expiration of the~~
12 ~~period to remedy the violation established by the governmental~~
13 ~~entity.~~

14 (3) ~~Subject to the provisions of this section, a governmental~~
15 ~~entity may establish different compliance periods for different~~
16 ~~conditions on the same property in the notice of alleged violation~~
17 ~~mailed to the legal owner.~~

18 (b) ~~For purposes of this section, “failure to maintain” means~~
19 ~~failure to care for the exterior of the property, including, but not~~
20 ~~limited to, permitting excessive foliage growth that diminishes the~~
21 ~~value of surrounding properties, failing to take action to prevent~~
22 ~~trespassers or squatters from remaining on the property, or failing~~
23 ~~to take action to prevent mosquito larvae from growing in standing~~
24 ~~water or other conditions that create a public nuisance.~~

25 (c) ~~Notwithstanding subdivisions (a) and (b), a governmental~~
26 ~~entity may provide less than 30 days’ notice to remedy a condition~~
27 ~~before imposing a civil fine if the entity determines that a specific~~
28 ~~condition of the property threatens public health or safety and~~
29 ~~provided that notice of that determination and time for compliance~~
30 ~~is given.~~

31 (d) ~~Fines and penalties collected pursuant to this section shall~~
32 ~~be directed to local nuisance abatement programs.~~

33 (e) ~~A governmental entity may not impose fines on a legal owner~~
34 ~~under both this section and a local ordinance.~~

35 (f) ~~These provisions shall not preempt any local ordinance.~~

36 (g) ~~This section shall only apply to residential real property.~~

37 (h) ~~The rights and remedies provided in this section are~~
38 ~~cumulative and in addition to any other rights and remedies~~
39 ~~provided by law.~~

- 1 (i) ~~This section shall remain in effect only until January 1, 2013,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2013, deletes or extends that date.~~